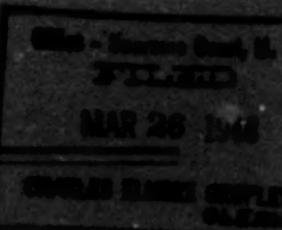


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**IN THE
SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1947.

No. 558.

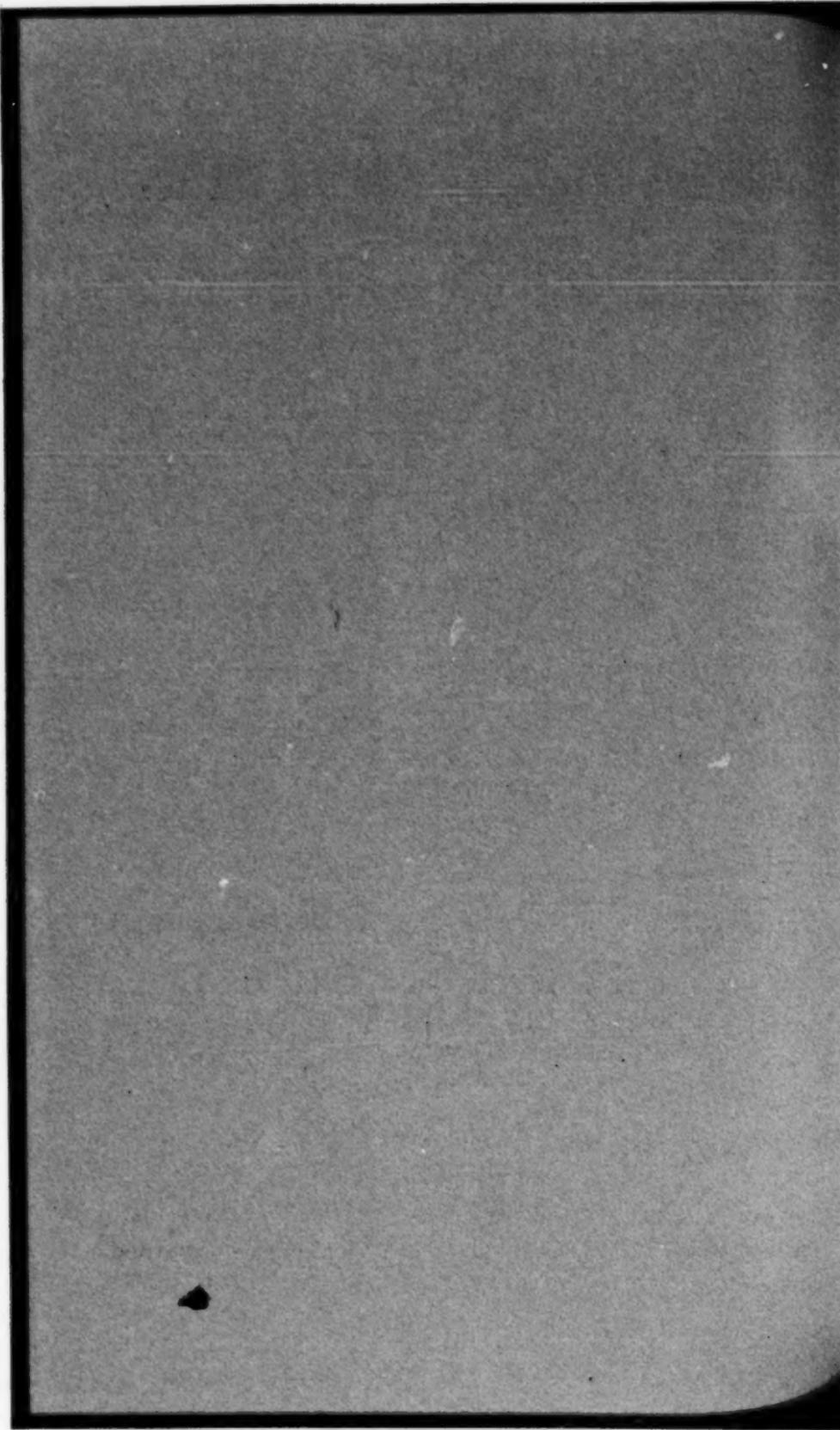
**GENERAL MOTORS CORPORATION,
Petitioner,**

v.

**ELMER G. KESLING,
Respondent.**

**RESPONDENT'S BRIEF OPPOSING REHEARING
AFTER DENIAL OF PETITION FOR
CERTIORARI.**

**EDMUND C. ROGERS,
ESTILL E. EZELL,
Attorneys for Respondent.**



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There is nothing new in the Petition for Rehearing. Certainly there are no "other substantial grounds available to petitioner although not previously presented" in the sense of Rule 33 as amended. Everything in this petition appeared in the original petition. Respondent inevitably inquires how many petitions are required for petitioner to present its full argument to this Court.

The argument of the Petition for Rehearing is the same erroneous argument about "feel", containing the same, wrong contention that the Court of Appeals awarded Kesling a patent on every shifter having "feel". To

the contrary, Kesling never claimed to have invented "feel", and the Court of Appeals referred to the matter of "feel" as "what anyone skilled in the art would know already" (R. 682). Obviously, the Court did not give Kesling a patent on something of common knowledge.

What Kesling patented was, as the Court of Appeals said (R. 679): "* * * the physical combination of the various mechanical elements and their functional interrelationship and operation." And continuing, the Court said that analysis of each claim "reveals a combination mechanical structure."

Infringement of these claims of "mechanical structure" was held because, as all of the judges below unanimously agreed, the Chevrolet shifter employed structure to "accomplish the same result and by the same means and by the same method of operation" (R. 687).

It is submitted that there is no basis for the Petition for Rehearing. No argument is offered that was not made in the original petition. The words are different but the syllogism is the same.

There is no merit in the arguments. Their premises torture the language of the Court of Appeals. Their fallacies do violence to logic and reason.

It is, therefore, urged that the Petition for Rehearing be denied, and that this lawsuit be brought to a final close at long last.

Respectfully,

EDMUND C. ROGERS,
ESTILL E. EZELL,

Attorneys for Respondent.

St. Louis, Missouri,
March 24, 1948.